

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WAYNE BERRY,

Plaintiff,

vs.

DEUTSCHE BANK TRUST COMPANY
AMERICAS (f.a. BANKERS TRUST COMPANY)
and JP MORGAN CHASE BANK, in their separate
capacities and as agents for the pre- and post-petition
lenders of Fleming Companies, Inc.; GENERAL
ELECTRIC CAPITAL CORPORATION; C&S
WHOLESALE GROCERS, INC.; THE POST-
CONFIRMATION TRUST OF FLEMING
COMPANIES, INC.; ROBERT KORS; CORE-MARK
HOLDINGS INC. and DOES 1 to 200.

Defendants.

x

: 01:07 CV 7634 WHP
: Judge William H. Pauley III
: ECF Case

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: DECLARATION F TIMOTHY J.
: HOGAN IN SUPPORT OF
: PLAINTIFF WAYNE BERRY'S
: REQUEST FOR JUDICIAL
: NOTICE IN SUPPORT OF HIS
: MEMORANDA IN
: OPPOSITION PLAINTIFF
: WAYNE BERRY'S
: MEMORANDUM IN
: OPPOSITION TO DEFENDANT
: GENERAL ELECTRIC
: CAPITAL CORPORATION'S
: MOTION TO DISMISS;
: EXHIBITS "1" TO "3"

Relates to Docket Entry No. 29

:

x

DECLARATION F TIMOTHY J. HOGAN IN SUPPORT OF PLAINTIFF WAYNE BERRY'S
REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF HIS MEMORANDA IN OPPOSITION
PLAINTIFF WAYNE BERRY'S MEMORANDUM IN OPPOSITION TO DEFENDANT
GENERAL ELECTRIC CAPITAL CORPORATION'S MOTION TO DISMISS;
EXHIBITS "1" TO "3"

TIMOTHY J. HOGAN (Hawaii Bar No. 5312)
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DECLARATION OF TIMOTHY J. HOGAN

I, Timothy J. Hogan, an attorney licensed to practice before all the courts of the state of Hawaii and am admitted to practice before this court, *pro hac vice*, and hereby declare under penalty of perjury that the following is true and accurate to the best of my knowledge and belief. If called upon to testify regarding the matters contained herein, I am competent and willing to do so. These materials are submitted for consideration and taking of judicial notice in regard to the motions Dismiss filed by GECC on December 21, 2007.

1. Attached hereto as Exhibit "1" is a true and correct copy of the Second Amended Complaint ("SAC") filed herein on December 21, 2007 as Docket Number 26. The Exhibits are intentionally omitted.

2. Attached hereto as Exhibit "2" is a true and correct copy of an excerpt from the Transcript of Proceedings dated March 2, 2006, in *Wayne Berry v. Hawaiian Express Service, Inc.*, CV 03-00385 SOM-LEK, (D. Hawaii).

3. Attached hereto as Exhibit "3" is a true and correct copy of Exhibit "A" to the Second Amended Complaint filed on December 21, 2007.

Executed at Honolulu, Hawaii, February 25, 2008.

/S/Timothy J. Hogan
TIMOTHY J. HOGAN